

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2007-1465-LII-E   **TCEQ ID:** RN105212930   **CASE NO.:** 34596  
**RESPONDENT NAME:** Francisco DeLuna dba Joint Aggies Irrigation

Page 1 of 2

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input checked="" type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 2533 Enloe, Bryan, Brazos County</p> <p><b>TYPE OF OPERATION:</b> Landscape irrigation</p> <p><b>SMALL BUSINESS:</b>   <input checked="" type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 27, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b></p> <p style="margin-left: 20px;"><b>TCEQ Attorney/SEP Coordinator:</b> None</p> <p style="margin-left: 20px;"><b>TCEQ Enforcement Coordinator:</b> Mr. Colin Barth, Enforcement Division, Enforcement Team 7, MC 128; (512) 239-0086; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171</p> <p style="margin-left: 20px;"><b>Respondent:</b> Mr. Francisco DeLuna, Owner, Joint Aggies Irrigation, 2553 Enloe, Bryan, Texas 77807</p> <p style="margin-left: 20px;"><b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> July 2, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> July 6, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine record review.</p> <p><b>WATER</b></p> <p>Failure to obtain an irrigator license prior to advertising services for which an irrigator license is required. Specifically, the Respondent advertised irrigation services in the 2006 Verizon Superpages [30 TEX. ADMIN. CODE §§ 30.5(b) and 344.4(a), TEX. WATER CODE § 37.003, and TEX. OCCUPATIONS CODE § 1903.251].</p>	<p><b>Total Assessed:</b> \$262</p> <p><b>Total Deferred:</b> \$52  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$210</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Immediately after the effective date of this Agreed Order, cease advertising irrigation system services until properly licensed; and</p> <p>b. Within 15 days after the effective date of this Agreed Order, submit written certification to demonstrate compliance with Ordering Provision a.</p>



Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision June 26, 2007

TCEQ  
DATES

Assigned 9-Jul-2007

PCW 11-Sep-2007

Screening 10-Sep-2007

EPA Due

## RESPONDENT/FACILITY INFORMATION

Respondent Francisco DeLuna dba Joint Aggies Irrigation

Reg. Ent. Ref. No. RN105212930

Facility/Site Region 9-Waco

Major/Minor Source Minor

## CASE INFORMATION

Enf./Case ID No. 34596

Docket No. 2007-1465-LII-E

Media Program(s) Irrigators

Multi-Media

No. of Violations 1

Order Type 1660

Enf. Coordinator Colin Barth

EC's Team Enforcement Team 7

Admin. Penalty \$ Limit Minimum \$0 Maximum \$2,500

## Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$250

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 5% Enhancement Subtotals 2, 3, &amp; 7 \$12

Notes Enhancement for one NOV with same or similar violations within the past five years.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

Before NOV NOV to EDRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes The Respondent does not meet the good faith criteria.

0% Enhancement\*

Subtotal 6 \$0

Total EB Amounts \$21

Approx. Cost of Compliance \$500

\*Capped at the Total EB \$ Amount

## SUM OF SUBTOTALS 1-7

Final Subtotal \$262

## OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount \$262

## STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$262

## DEFERRAL

20%

Reduction

Adjustment -\$52

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

## PAYABLE PENALTY

\$210

Screening Date 10-Sep-2007.

Docket No. 2007-1465-LII-E

PCW

Respondent Francisco DeLuna dba Joint Aggies Irrigation

Policy Revision 2 (September 2002)

Case ID No. 34596

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN105212930

Media [Statute] Irrigators

Enf. Coordinator Colin Barth

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

## &gt;&gt; Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV with same or similar violations within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 5%

<b>Screening Date</b> 10-Sep-2007 <b>Respondent</b> Francisco DeLuna dba Joint Aggies Irrigation <b>Case ID No.</b> 34596 <b>Reg. Ent. Reference No.</b> RN105212930 <b>Media [Statute]</b> Irrigators <b>Enf. Coordinator</b> Colin Barth <b>Violation Number</b> <input type="text" value="1"/>	<b>Docket No.</b> 2007-1465-LII-E <b>PCW</b> <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision June 26, 2007</i>																				
<b>Rule Cite(s)</b> 30 Tex. Admin. Code §§ 30.5(b) and 344.4(a), Tex. Water Code § 37.003, and Tex. Occupations Code § 1903.251																					
<b>Violation Description</b> Failed to obtain an irrigator license prior to advertising services for which an irrigator license is required, as documented during a record review investigation conducted on July 2, 2007. Specifically, the Respondent advertised for irrigation services in the 2006 Verizon Superpages.																					
<b>Base Penalty</b> <input type="text" value="\$2,500"/>																					
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																					
<b>OR</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 15%; text-align: center;"><b>Release</b></td> <td style="width: 15%; text-align: center;"><b>Harm</b></td> <td style="width: 15%; text-align: center;"><b>Major</b></td> <td style="width: 15%; text-align: center;"><b>Moderate</b></td> <td style="width: 15%; text-align: center;"><b>Minor</b></td> <td style="width: 20%;"></td> </tr> <tr> <td></td> <td>Actual</td> <td></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;"> <b>Percent</b> <input type="text" value="0%"/> </td> </tr> <tr> <td></td> <td>Potential</td> <td></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>		<b>Release</b>	<b>Harm</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>			Actual		<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>		Potential		<input type="text"/>	<input type="text"/>	<input type="text"/>
	<b>Release</b>	<b>Harm</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>																
	Actual		<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>															
	Potential		<input type="text"/>	<input type="text"/>	<input type="text"/>																
<b>&gt;&gt; Programmatic Matrix</b>																					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 15%; text-align: center;"><b>Falsification</b></td> <td style="width: 15%; text-align: center;"><b>Major</b></td> <td style="width: 15%; text-align: center;"><b>Moderate</b></td> <td style="width: 15%; text-align: center;"><b>Minor</b></td> <td style="width: 20%;"></td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">x</td> <td><input type="text"/></td> <td><input type="text"/></td> <td> <b>Percent</b> <input type="text" value="10%"/> </td> </tr> </table>		<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>				x	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>								
	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>																	
		x	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>																
<b>Matrix Notes</b>	<div style="border: 1px solid black; padding: 5px; min-height: 40px;">           100% of the rule requirement was not met.         </div>																				
<b>Adjustment</b> <input type="text" value="\$2,250"/>																					
<input type="text" value="\$250"/>																					
<b>Violation Events</b>																					
<table style="width: 100%;"> <tr> <td style="width: 40%;"> <b>Number of Violation Events</b> <input type="text" value="1"/> </td> <td style="width: 20%;"></td> <td style="width: 40%;"> <b>Number of violation days</b> <input type="text" value="63"/> </td> </tr> </table>		<b>Number of Violation Events</b> <input type="text" value="1"/>		<b>Number of violation days</b> <input type="text" value="63"/>																	
<b>Number of Violation Events</b> <input type="text" value="1"/>		<b>Number of violation days</b> <input type="text" value="63"/>																			
<b>mark only one with an x</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 20%;">daily</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td style="text-align: center;">x</td></tr> </table>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	x								
daily	<input type="text"/>																				
monthly	<input type="text"/>																				
quarterly	<input type="text"/>																				
semiannual	<input type="text"/>																				
annual	<input type="text"/>																				
single event	x																				
<b>Violation Base Penalty</b> <input type="text" value="\$250"/>																					
<div style="border: 1px solid black; padding: 10px; margin: 10px auto; width: 80%;">         One single event is recommended.       </div>																					
<b>Economic Benefit (EB) for this violation</b>																					
<b>Statutory Limit Test</b>																					
<b>Estimated EB Amount</b> <input type="text" value="\$21"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$262"/>																				
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$262"/>																					

**Economic Benefit Worksheet****Respondent** Francisco DeLuna dba Joint Aggies Irrigation**Case ID No.** 34596**Reg. Ent. Reference No.** RN105212930**Media** Irrigators**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$500	2-Jul-2007	2-May-2008	0.8	\$21	n/a	\$21
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to obtain a valid irrigation license. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs**

\$500

**TOTAL**

\$21

## Compliance History

Customer/Respondent/Owner-Operator:	CN603181280	DELUNA, FRANCISCO	Classification:	Rating:
Regulated Entity:	RN105212930	DELUNA FRANCISCO	Classification:	Site Rating:
ID Number(s):				
Location:	2533 ENLOE, BRYAN, TX, 77807			
TCEQ Region:	REGION 09 - WACO			
Date Compliance History Prepared:	September 06, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 06, 2002 to September 06, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Colin Barth	Phone:	512 239 0086	

## Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

### Components (Multimedia) for the Site :

- |                        |   |  |
|------------------------|---|--|
| A.                     | Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. | N/A  |
| B.                     | Any criminal convictions of the state of Texas and the federal government.  | N/A  |
| C.                     | Chronic excessive emissions events.   | N/A  |
| D.                     | The approval dates of investigations. (CCEDS Inv. Track. No.)   | N/A  |
| E.                     | Written notices of violations (NOV). (CCEDS Inv. Track. No.)  | <p>Date: 05/18/2007 (558980)</p> <p>Self Report? NO Classification: Moderate</p> <p>Citation: 30 TAC Chapter 30, SubChapter A 30.5(b)</p> <p>Description: A person may not advertise or represent themselves to the public as a holder of a license or registration unless they possess a current license or registration. A person may not advertise or represent to the public that it can perform services for which a license or registration is required unless it holds a current license or registration, or unless it employs individuals who hold current licenses.</p> <p>Specifically, during a record review initiated on 05/02/07, it was documented that Mr. Francis</p> |
| F.                     | Environmental audits.   | N/A  |
| G.                     | Type of environmental management systems (EMSs).  | N/A  |
| H.                     | Voluntary on-site compliance assessment dates.  | N/A  |
| I.                     | Participation in a voluntary pollution reduction program.   | N/A  |
| J.                     | Early compliance.   | N/A  |
| Sites Outside of Texas |   |  |
|                        |   | N/A  |





# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
FRANCISCO DELUNA DBA JOINT  
AGGIES IRRIGATION  
RN105212930**

§       **BEFORE THE**  
§  
§  
§       **TEXAS COMMISSION ON**  
§  
§       **ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-1465-LII-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Francisco DeLuna dba Joint Aggies Irrigation ("Mr. DeLuna") under the authority of TEX. WATER CODE chs. 7 and 37 and TEX. OCCUPATIONS CODE ch. 1903. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. DeLuna appear before the Commission and together stipulate that:

1. Mr. DeLuna owns and operates a landscape irrigation business at 2533 Enloe in Bryan, Brazos County, Texas.
2. TCEQ has general authority to regulate the design and installation of landscape irrigation systems, and the licensing of landscape irrigators and installers, pursuant to TEX. OCCUPATIONS CODE ch. 1903.
3. The Commission and Mr. DeLuna agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. DeLuna is subject to the Commission's jurisdiction.
4. Mr. DeLuna received notice of the violations alleged in Section II ("Allegations") on or about July 11, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. DeLuna of any violation alleged in Section II ("Allegations"), nor of any statute or rule.



6. An administrative penalty in the amount of Two Hundred Sixty-Two Dollars (\$262) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. DeLuna has paid Two Hundred Ten Dollars (\$210) of the administrative penalty and Fifty Two Dollars (\$52) is deferred contingent upon Mr. DeLuna's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. DeLuna fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. DeLuna to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. DeLuna have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. DeLuna has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As a landscape irrigator, Mr. DeLuna is alleged to have failed to obtain an irrigator license prior to advertising services for which an irrigator license is required, in violation of 30 TEX. ADMIN. CODE §§ 30.5(b) and 344.4(a), TEX. WATER CODE § 37.003, and TEX. OCCUPATIONS CODE § 1903.251, as documented during a record review investigation conducted on July 2, 2007. Specifically, Mr. DeLuna advertised for irrigation services in the 2006 Verizon Superpages.

## **III. DENIALS**

Mr. DeLuna generally denies each allegation in Section II ("Allegations").

## **IV. ORDERING PROVISIONS**



1. It is, therefore, ordered by the TCEQ that Mr. DeLuna pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. DeLuna's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Francisco DeLuna dba Joint Aggies Irrigation, Docket No. 2007-1465-LII-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that Mr. DeLuna shall undertake the following technical requirements:
  - a. Immediately after the effective date of this Agreed Order, cease advertising irrigation system services until properly licensed, in accordance with the requirements of 30 TEX. ADMIN. CODE ch. 344; and
  - b. Within 15 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087



with a copy to:

Regulatory Compliance Section, MC 128  
Texas Commission on Environmental Quality  
P.O. BOX 13087  
Austin, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. DeLuna.
4. If Mr. DeLuna fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. DeLuna's failure to comply is not a violation of this Agreed Order. Mr. DeLuna shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. DeLuna shall notify the Executive Director within seven days after Mr. DeLuna becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. DeLuna shall be made in writing to the Executive Director. Extensions are not effective until Mr. DeLuna receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. DeLuna in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. DeLuna, or three days after the date on which the Commission mails notice of the Order to Mr. DeLuna, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.





## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John S. Sullivan  
\_\_\_\_\_  
For the Executive Director

4/30/2008  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Francisco DeLuna  
\_\_\_\_\_  
Signature

10/8/07  
\_\_\_\_\_  
Date

Francisco DeLuna  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Francisco DeLuna dba Joint Aggies Irrigation

Owner  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

